



GED Focus Paper

# The Comprehensive and Progressive Trans-Pacific Partnership

Policy Innovations and Impacts

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Author:

Deborah Elms

*Executive Director, Asian Trade Centre, Singapore*

### **Contact**

Dr Christian Bluth  
Project Manager  
Global Economic Dynamics  
Bertelsmann Stiftung  
Telephone 05241 81-81329  
Fax 05241 81-681329  
[christian.bluth@bertelsmann-stiftung.de](mailto:christian.bluth@bertelsmann-stiftung.de)  
[www.bertelsmann-stiftung.de](http://www.bertelsmann-stiftung.de)

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# Content

<b>1</b>	<b>Executive Summary.....</b>	<b>4</b>
<b>2</b>	<b>CPTPP is Transformational .....</b>	<b>5</b>
2.1	CPTPP Works for Goods: Candles .....	5
2.2	CPTPP Works for Services: Arthritis .....	6
<b>3</b>	<b>Backing Up: How CPTPP Evolved .....</b>	<b>7</b>
<b>4</b>	<b>The CPTPP in Detail .....</b>	<b>9</b>
4.1	Facilitating Supply Chains or Regional Value Chains .....	10
4.2	Regulatory Coherence.....	12
4.3	Services and Investment .....	13
4.4	The Digital Economy .....	14
4.5	Sustainable Development.....	15
4.6	Institutional Arrangements.....	17
<b>5</b>	<b>CPTPP Effects on Non-Members .....</b>	<b>18</b>
5.1	Impact of the CPTPP on the WTO and the Global Trading System .....	19
<b>6</b>	<b>Conclusion .....</b>	<b>21</b>

## 1 Executive Summary

Why did the member states in what eventually became the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) agree to create the most transformational free trade agreement (FTA) in decades? Equally puzzling, why did all the member states—from the most to the least developed economies in the group—agree to the same, high level of ambition? The answer is simple: CPTPP members wanted to craft an agreement better suited to the global economy of today and tomorrow and were willing to take on board high quality, high ambition commitments to get there.

While the answer sounds simple, getting to “yes” in the agreement was not easy. Negotiations took five arduous years, with dozens of full rounds and many smaller meetings, over which the membership kept expanding. Just at the moment of success, the key player withdrew from the deal, leaving it to the remaining 11 partners to resurrect the agreement and continue forward.

During all the turbulent negotiations of this agreement, the global landscape also kept shifting. At the earliest days of informal discussions, international talks were just getting underway at the World Trade Organization in what became the Doha Development Round. The agreement morphed into the Trans-Pacific Partnership (TPP) with new membership after the Doha negotiations fell apart in 2008. It picked up momentum and continued to expand, reaching a zenith of a dozen participants at the close of talks in 2015.

American elections in late 2016 changed the calculus in the talks again, heralding a new approach to the TPP and global trade. The remaining members in the trade agreement continued to press ahead with a renamed and modified CPTPP to keep critically important trade lanes open at a time of international trade disruption. The stabilizing effect of the CPTPP and the necessity of a common set of rules and commitments meant that other interested parties were asking for accession to the CPTPP even before the original members had completed domestic ratification procedures needed to bring the agreement into force in late 2018.

The trade officials who first began toying with the idea of creating a high quality, ambitious trade agreement in the Pacific in the late 1990s could not have foreseen the constellation of events over the coming years. They ended up setting in motion the development of a trade agreement that has already brought together countries from three continents at diverse levels of economic development dedicated to trying new approaches to trade deals. The expansion of the deal has shown the importance of the arrangement.

## 2 CPTPP is Transformational

Traditional free trade agreements (FTAs)—even highly ambitious bilateral deals or less rigorous regional arrangements—are poorly suited for today’s business world. Companies rarely operate in only two countries, making bilateral FTAs a problem. Less comprehensive regional arrangements tend to leave out key provisions that matter to firms.

The Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) is set to become the most transformational trade agreement in decades. What makes this FTA so important is the deep, interlocking nature of commitments that more accurately reflects the way business is conducted today. It sets up a structural framework more soundly for future economic activity.

One of the challenges that many commentators have had in describing the impact of CPTPP, however, is that most have focused attention on only one or two elements of the deal. Seen in isolation, chapters of the agreement do not always look radically different than what has gone before in various settings.

This is rather like the parable of the group of blind individuals that try to describe an elephant based on touching just one portion of the animal. The person that grasps the tusk has a different idea of the beast than the one who touched the tail or the ears.

The complete CPTPP agreement is like the elephant—30 chapters comprising nearly 600 pages of dense legal text in tiny font accompanied by thousands of pages of individual country schedules for goods, services, investment, government procurement, business mobility and more, plus dozens of bilateral letters.

Sorting out what it all means clearly and succinctly is probably impossible. Instead, individuals default to describing certain elements of the agreement or trying to measure portions of the deal that are most easily quantified. This fails to properly capture the totality of the agreement. It can lead to description of the CPTPP that suggests it is less ambitious than it actually is or will deliver fewer economic benefits to companies and consumers.

The CPTPP is the most significant FTA in twenty years. Such a statement is not hyperbole or the product of an overactive imagination. Seeing the full picture of what the CPTPP can do for companies requires a new way of looking at trade agreements because the usual measures of assessing FTAs tend to fall short. It is not just about cutting all tariff lines to zero or opening up services. It is the deep, interlocking nature of the deal that matters.

All regional agreements, of course, are automatically better positioned to match business operations of today and the future than purely bilateral deals. Companies rarely source and sell in only one other market. The CPTPP has already expanded over the course of negotiations and is set to add new members in relatively short order. But it is not just the regional nature of the agreement that makes the CPTPP so important. It is also the way that the rules combine with the individual country commitments for firms supplying goods and services that highlights the transformative nature of this FTA. Two examples, of candles and arthritis care, help illustrate the powerful combination of improvements embedded in the CPTPP.

### 2.1 CPTPP Works for Goods: Candles

In the rush to see transformation, many have downgraded the utility of commitments for goods in the CPTPP. After all, decades of repeated tariff cuts at the World Trade Organization and a host of existing bilateral (and occasionally regional) trade agreements have dealt with market access problems for goods. An example of a candle, however, shows that there is still more work needed to help large and small firms that goes beyond simple tariff cuts.

To best grasp the benefits of CPTPP, consider the humble candle. A candle company will be able to take advantage of at least a dozen different chapters in the CPTPP agreement. As a result, even a small candle company that wants to use the agreement to export to CPTPP member countries should see sales boom.

How? First, candle tariffs, which act like a tax on exports, are set to fall in the agreement. Many tariffs are quite high, making exports challenging, particularly for smaller firms. For instance, in Vietnam, the pre-CPTPP tariff was currently 24% and will fall over two years to zero. Canada’s 5.5% tariff went to 0 on the first day of the agreement on December 30, 2018. Mexico’s 30% duty rate falls to zero across eight years. Malaysia charges

15% which will be eliminated in even steps across 6 years. Each of these tariff reductions allow the candle company to become more competitive in these markets compared candles from non-TPP firms.

Second, candle companies, like all CPTPP members, can take advantage of the rules of origin. In brief, it means that once the company meets the criteria for making the product inside the CPTPP, it can be shipped to all other CPTPP members without any changes in manufacturing because the agreement uses the same rules of origin for all 11 member countries.

Firms can also add up or “cumulate” content from across all CPTPP countries to count towards origin. The candle company, as an example, could add citrus from Vietnam and lavender from Mexico with wax derived from chemicals in Singapore. Cumulation is a key element of a regional agreement, since it provides the firm with more sourcing options for raw materials, parts and components than requiring only local content or sourcing from just two parties like bilateral trade agreements.

The resulting candle can be shipped more easily using the trade facilitation rules in CPTPP, which allows self-certification, or shipment without a specific piece of documentation called a certificate of origin. Firms can also get customs officials to classify the candle using something called an “advance ruling” so the company can be confident that the candle will be classified as a candle and not as a product called “other” and subjected to higher tariffs or different rules of origin at the border for up to three calendar years.

The firm making candles can also more easily supply and access the key services to sell the product. Marketing, distribution and retail are critical to the success of the product. This includes online distribution of advertising and the use of e-commerce channels. The CPTPP protects and expands access for firms in services, investment, and e-commerce.

Another critically important issue for the candle company is protecting the intellectual property investment behind the product, including the brand, packaging and even the scent. The CPTPP helps protect these investments and provides for enhanced enforcement to stop counterfeit products appearing in the marketplace.

As a result of so many new benefits, a smart candle company should relook at its operations and growth strategy. Markets that were not attractive before, because the tariffs were too high, because freight was too costly, because border delays were inevitable, or because retail investments were not possible, may suddenly look much more attractive.

The candle example shows the potential benefits of the CPTPP and also the challenges of describing the deal. Commentators tend to focus on the tariff cuts, but for a candle producer, the protection of the scent is every bit as important. After all, without scent, a candle is just wax and a wick.

Equally challenging for analysis to capture effectively is that the firm may never have been present in Vietnam. Tariffs of 24% are high enough that the company may never have been competitive in the past. Once these tariffs fall to zero, however, a market that was never attractive suddenly becomes much more “in play.” Many economic models will find this type of shift impossible to capture.

## **2.2 CPTPP Works for Services: Arthritis**

The CPTPP does not merely deal with goods and then repeat existing WTO commitments for services, like many FTAs, with limited additional market access or national treatment benefits. Instead, the CPTPP opens up trade in services in profoundly new ways.

Like the candle example, the benefits of services liberalization can be hard to grasp. Even negotiators involved in CPTPP talks have sometimes struggled to explain how the agreement will help firms compete more effectively. Measuring the gains in services and investment is especially difficult. This is because, unlike many FTAs, the CPTPP opened up every single sector and subsector automatically—now and into the future—with very few exceptions, using every mode of delivery.

Perhaps the easiest way to see the change is to think about a firm trying to deliver arthritis care in multiple markets. Given the rapid aging in many CPTPP countries, this is a growth opportunity. But existing trade deals typically carve out health care entirely. It is not just public hospitals that are off-limits to foreign service providers, but private clinics are typically not allowed either.



Under CPTPP, however, the entire health sector has been opened. Firms can provide medical services in the private health setting using whatever mechanisms they deem appropriate—including digitally. They can set up and operate clinics as investors. They could deal with the construction and building of site-specific facilities.

CPTPP firms may be able to move doctors and nurses more easily in and out using the business mobility chapter commitments for temporary movement of personnel. Of course, it should be noted that skilled providers of healthcare may need special licensing and qualifications for some services in domestic markets. The domestic level implementation of CPTPP will be important to watch.

For a firm interested in arthritis care, CPTPP also allows easier movement of medical devices, pharmaceutical products, and so forth. The agreement has specific annexes for these products to clarify rules that often create barriers to trade in both sectors.

Prior to CPTPP, firms may have been able to set up arthritis clinics in another country, but access was not guaranteed. Now, a firm could roll out a chain of clinics that could be replicated in multiple markets. If, over time, some entirely new type of medical service is developed to handle arthritis or any other medical issue, this sector would be automatically opened to CPTPP firms (unless the member states agreed to close it after new negotiations). In short, the services and investment sectors are also facing revolutionary changes in CPTPP markets.

To understand what the CPTPP delivers to members and why 12 diverse countries from three continents ultimately agreed to a range of provisions, this paper starts with a short history of the agreement. It then provides a snapshot of the agreement before delving into specific rules of relevance to supply chains, new ideas around regulatory coherence and services and investment provisions. To better grasp why members like Vietnam signed up for TPP commitments, the paper considers the developmental dimensions of the deal before turning to accession provisions and how the CPTPP will affect non-members and the wider global community.

### 3 Backing Up: How CPTPP Evolved

Why did the member states in the CPTPP agree to such sweeping changes? Equally puzzling, why did all the member states—from the most to the least developed economies in the group—agree to the same, high level of ambition?

To understand why members agreed to such ambitious outcomes for sectors as diverse as candles and health, it is worth taking the time to recall how the members in the CPTPP got into the agreement. In the late 1990s, as part of the Asia Pacific Economic Cooperation (APEC) process, five countries started having informal dialogues on the sidelines. Officials discussed the possibility of starting FTA negotiations between like-minded countries on a new type of trade agreement. This new FTA would try to tackle topics well beyond goods and address a wide range of issues not addressed elsewhere.

But, once the Doha Development Agenda (DDA) talks got underway in the World Trade Organization in 2001, Australia and the United States decided to recommit to a multilateral path. Chile, New Zealand and Singapore remained interested in showing how three small, open economies could craft a comprehensive, high-quality trade agreement. They proceeded with talks, eventually folding in Brunei, to complete the Trans-Pacific Strategic Economic Partnership (TPSEP) or P4 in 2006.

The agreement was always intended to expand. When it closed, two chapters remained unfinished. In the waning days of the George W. Bush administration in 2008, the United States asked to join discussions on the outstanding financial services and investment chapters. Within a short timeframe, Australia and Peru also asked to be involved, followed by Vietnam. The P4 had become the P9.

When the parties finally sat down to negotiate in March 2010, the original P4 template was quickly discarded. But the sentiment behind the agreement remained—members were committed to crafting a new, ambitious, high-quality and comprehensive trade agreement without exceptions.

The provisions of the new deal, renamed the Trans-Pacific Partnership (TPP), would apply equally to all parties. At the time, in early 2010, the DDA talks were foundering over many issues, including challenges related to special and differential treatment for developing countries. The TPP, by contrast, would be different. The agreement would not have two tracks. Every commitment would apply to every member. The TPP, with a range of countries

from the United States and Australia to Vietnam and Peru, would show how high ambition could apply equally and deliver economic benefits to all.

TPP talks continued across more than five years, often on the sidelines of APEC meetings, since all members were simultaneously members of APEC.<sup>1</sup> As the years went by, membership in TPP increased with the addition of Malaysia (2010), Canada and Mexico (2012) and Japan (2013). The addition of new members increased the complexity of negotiations, but also added to the overall benefits of the final agreement as the market size and coverage of members increased.

Negotiations were finally concluded after multiple marathon sessions in 2015. The full negotiating texts and market access schedules were released afterwards by New Zealand.<sup>2</sup> Members began the process of domestic level ratification. Malaysia received Parliamentary approval in January 2016, New Zealand in November 2016, and Japan's Diet finished approval on 9 December 2016.

However, domestic level ratification within the United States proved impossible. First, the agreement foundered on an unforgiving electoral calendar that would have required members of Congress to take an unpopular vote on trade in the middle of a heated 2016 Presidential election. Both major party candidates staked out positions in opposition to TPP. Once Donald Trump was elected President, the TPP was doomed. On his first full day in office, on 24 January 2017, he withdrew the United States from further participation. This looked like the end of the line for the Trans-Pacific Partnership.

But Japan and New Zealand ultimately picked up the pieces and carried on. They held multiple meetings with the remaining 11 members and worked out modifications to the agreement. The key problem was the original entry into force provision that required American participation. This needed to be adjusted.

After nearly a year of renegotiations, a revised agreement, the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), was signed in January 2018 by 11 countries and the final texts and schedules were released on 21 February 2018.

The CPTPP is identical to the TPP except for revisions to the entry into force provision, a few modifications to TPP Chapter 30, the suspension of 20 commitments in the legal texts,<sup>3</sup> and the exchange of some new side letters between some of the CPTPP members.<sup>4</sup>

All other elements of the agreement remained unchanged—all market access schedules for goods, services, investment, government procurement, business mobility, and state-owned enterprises were untouched. The legal text was unchanged: other than the 20 specific elements, dropping the total number of pages from 620 to roughly 580.<sup>5</sup> Any US-specific commitments were also suspended, including all American side letters.

The revised entry into force procedures removed GDP thresholds<sup>6</sup> and instead required 6 countries or 50% of signatures to complete domestic procedures and then, after 60 days, CPTPP entry into force (EIF) automatically began.<sup>7</sup>

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<sup>1</sup> Note that the revised version of the TPP has removed the explicit connection to APEC in the accession criteria (CPTPP Article 5).

<sup>2</sup> New Zealand has always served as the official repository country for TPP and now CPTPP. There is—for now—no Secretariat or permanent body to manage the agreement.

<sup>3</sup> The suspended elements were not cancelled. They may be reinstated at a later date, if members agree to do so. The CPTPP also clarified two additional provisions for Brunei and Malaysia where the original TPP language was ambiguous.

<sup>4</sup> Not every CPTPP member signed side letters. None cover all members and most are bilateral arrangements. Some may be applied to more than one member, ie, the same text is copied in more than one letter as in New Zealand's provisions on investor-state dispute settlement to multiple members. Some are commercially meaningful while others are less so. Some of the side letters can be found on New Zealand's site. Others are on individual member sites.

<sup>5</sup> As before, the CPTPP texts and schedules can be found on the New Zealand website, as well as on most member trade ministry sites. For the official version, see <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text/>

<sup>6</sup> This was the original problem with US withdrawal, as the TPP required 6 signatories accounting for at least 85% of GDP of the original signatories from 2013 (TPP 30.5). Had the TPP not included either the 85% provision or not set the timeline at signatories from 2013, the agreement could have come into force without the Americans. In a bit of irony, the original provision was meant to prod the Japanese into signing quickly and ensuring that no last-minute entrant could be a spoiler.

<sup>7</sup> EIF will take place for those members that completed domestic procedures. For the rest, EIF will take place 60 days after they have finished up their internal processes. As an added incentive to complete the task quickly, the first group of members to participate will begin developing in greater detail the specific rules for accession of new members and the institutional framework to run the CPTPP more effectively in the future.



Members were so worried about not being one of the original 6 signatories that they went faster than anticipated, bringing the CPTPP into force ahead of schedule on December 30, 2018, for Australia, Canada, Japan, Mexico, New Zealand and Singapore. As a result, five of these members actually gave “double” tariff cuts to member firms on January 1, 2019, when “Year 2” tariff reductions were granted.<sup>8</sup> Vietnam officially joined (with the same “double” tariff cuts) on January 14, 2019. For the remaining four countries (Brunei, Chile, Malaysia and Peru), whenever domestic level procedures are completed and notified to the CPTPP member countries, the agreement is set to start 60 calendar days later.<sup>9</sup>

## 4 The CPTPP in Detail

The CPTPP is a comprehensive agreement with commitments that are broader and deeper than traditional FTAs. The 30 chapters include extensive, legally binding pledges<sup>10</sup> in:

- Preamble
- 1. Initial Provisions and General Definitions
- 2. National Treatment and Market Access for Goods
- 3. Rules of Origin and Origin Procedures
- 4. Textile and Apparel Goods
- 5. Customs Administration and Trade Facilitation
- 6. Trade Remedies
- 7. Sanitary and Phytosanitary Measures
- 8. Technical Barriers to Trade
- 9. Investment
- 10. Cross-Border Trade in Services
- 11. Financial Services
- 12. Temporary Entry for Business Persons
- 13. Telecommunications
- 14. Electronic Commerce
- 15. Government Procurement
- 16. Competition Policy
- 17. State-Owned Enterprises and Designated Monopolies
- 18. Intellectual Property
- 19. Labour
- 20. Environment
- 21. Cooperation and Capacity Building
- 22. Competitiveness and Business Facilitation
- 23. Development
- 24. Small and Medium-Sized Enterprises
- 25. Regulatory Coherence
- 26. Transparency and Anti-Corruption
- 27. Administrative and Institutional Provisions
- 28. Dispute Settlement
- 29. Exceptions and General Provisions
- 30. Final Provisions

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<sup>8</sup> Japan’s “Year” commitments have always been set to start on April 1, to match their fiscal year, so Japan’s “Year 2” tariff reductions will take place on April 1, 2019.

<sup>9</sup> With tariff reductions set to the equivalent of the rest of the group, ie, if it takes 2 years to complete procedures, the entry into force levels for the member will be set exactly where the other CPTPP member schedules are set (most likely at “Year 3” on the original documents). This was meant to reduce the incentives for members to delay accession.

<sup>10</sup> This is a slight exaggeration, as there are some elements of the CPTPP which are not legally binding. However, it is fairer to say that nearly everything is binding than not.

The CPTPP document is a relatively short agreement that covers the modifications from the original TPP document. The CPTPP includes the TPP provisions by reference. Hence, most of this paper refers to the TPP, rather than CPTPP, unless the provisions under discussion are specific to the CPTPP and not to the original document.

One of the more innovative elements of the CPTPP/TPP is the extent to which the agreement started on entry into force (EIF). Unlike most FTAs, which have long staging periods with limited impact for companies in the short term, CPTPP should deliver immediate benefits for firms from the very first day of application.

As an example, nearly all tariffs started to fall from the first day. Many of these cuts were steep and immediate—from 30 or 40% to zero. The entire remainder of the agreement also became active immediately: all 160 services and investment sectors and subsectors were opened for CPTPP firms (unless a reservation has been taken), all customs and trade facilitation rules started immediately, all new provisions in standards for food (SPS) and non-food (TBT) began, e-commerce rules on data came into force, and so forth.

The entire intellectual property rights chapter has taken effect, with minor delays for Vietnam. Vietnam also received some additional time to implement some rules for e-commerce in CPTPP side letters, and some extensions on time before dispute settlement can begin for some commitments.<sup>11</sup> In short, the CPTPP started on day one with immediate effect for firms.<sup>12</sup>

Member states agreed to these provisions because they recognized the importance of delivering results. It is not possible to argue that an agreement is high quality and ambitious and then take years for benefits to show up in company bottom lines. In addition, the immediate application of CPTPP also meant that leaders could begin showcasing “winners” from the very beginning. Given the extensive benefits on offer in the agreement, finding firms that have gained market share or saved costs should not be difficult.

## 4.1 Facilitating Supply Chains or Regional Value Chains

One of the original intentions of officials in crafting the TPP was to better facilitate supply chains or regional value chains. Member states recognized that existing trade agreements did not match up particularly well with the increasingly complex world of integrated supply networks. Bilateral agreements, in particular, do not work at all for this purpose and even regional deals can be problematic if they are not deep and broad enough to cover all aspects of the network.

The early thinking in the TPP was to eliminate entirely the traditional “chapters” in the agreement. Officials spent the first few rounds of negotiations in “clusters” which were designed to get more innovative and creative thinking about how new issues might be usefully tackled in the agreement. However, once conversations shifted from high level scoping to crafting draft texts and potential schedules to match the aspirations of the new approaches, officials quickly reverted to traditional methods of handling trade agreements. It was simply too difficult to manage TPP outcomes in a “cluster-style” approach with what effectively resembled interdisciplinary teams. Instead, the overall country lead officials resolved to take a much more hands-on approach to managing the cross-cutting elements of the final agreement and ensure that fewer items got dropped in the race to the finish line.

From the beginning, TPP members were actively involved in supply chains. Most were already well connected by existing trade agreements.<sup>13</sup> Hence one important goal was to deliver greater benefits through the TPP than existing FTAs that did not allow firms to effectively integrate parts and components into final products for shipment to TPP countries.

Regional agreements, of course, are automatically set up better to deliver this outcome than bilateral agreements, since cumulation rules allow firms to include raw materials and components from any participating country to “count” towards the final value embedded in the product. Larger groupings of member countries make it easier to reach the specified thresholds for included value content than smaller agreements, such as bilateral deals with only two member states.

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<sup>11</sup> These time extensions for certain provisions will also apply to members like Brunei and Peru once they have entered the agreement.

<sup>12</sup> In those member countries that have completed domestic level ratification to bring the agreement into force. Members that have not yet completed domestic procedures cannot use the CPTPP until 60 days after their own ratification or approval process is finished.

<sup>13</sup> See the chart in Lim, Elms, and Low, p. 33.

The TPP members wanted to go beyond simply having a regional agreement with rules of origin crafted to encourage cumulation between member states.<sup>14</sup> Tariffs remain a problem for supply chains. Even small tariff rates can be deeply damaging to complex products, as the total size of embedded tariffs in items that cross borders repeatedly can be substantial. Hence, the TPP needed to cut all tariffs to zero—without exceptions. This included highly sensitive products like agricultural tariff lines that are typically excluded from FTAs since many food products can also be part of important supply chains. Processed food, in particular, represented a key avenue for domestic level value addition.

#### 4.1.1 Rules of Origin

Tariff cuts alone would not be sufficient to encourage supply chain formation. The rules of origin also needed to be crafted to ensure that firms could use the agreement in the end. While the TPP market access schedules are different for each member country (at least until the final phase in when nearly all tariffs fall to zero),<sup>15</sup> the rules of origin are the same for all members.

Once a product is created to match TPP rules of origin (ROOs), it needs no additional modifications to be shipped into all member countries and receive the preferential tariff rates on offer for TPP firms. Like any FTA, TPP benefits are available only for goods sent between TPP member states. It is not possible to create a product under TPP rules and send it to the European Union, for instance, from Vietnam or Singapore under the bilateral arrangements both countries have with the EU.

Most trade agreements in Asia use one method of calculating ROOs—regional value content (RVC). While the specific threshold can vary, it generally hovers around 40-45%. In other words, as long as 40-45% of the value of the product is added with content from FTA partners, it qualifies for preferential tariff rates. This method, while often beneficial for firms, does not always foster supply chain formation.

In particular, it has several key flaws for companies. It depends on extensive paperwork with often confidential information or proprietary knowledge to be passed along to officials to justify the calculation of value content addition.<sup>16</sup> Not all products, particularly those in the petrochemicals sector, for instance, can easily meet RVC rules since the price of oil tends to skew the calculation such that few firms can claim to add an additional 40% in value to the price of the raw material. Exchange rate fluctuations and raw materials or commodities distortions can also wreak havoc on RVC planning.

Change in tariff heading (CTH or CTC) rules, by contrast, can remain stable, even if suppliers shift, or exchange rates or materials or labor costs vary.<sup>17</sup> For the chemicals sector, process rules that require that chemicals be manufactured inside a TPP country can avoid the challenges related to shifting prices of raw materials in RVC methods of calculation.

Hence the TPP officials took steps from the very beginning to craft product-specific ROOs—for every tariff line, there is a matching rule of origin. This helped fine-tune the agreement to best match the easiest method of reaching origin, rather than imposing blanket ROO rules on large swaths of products. Officials also took steps to try to include multiple ROO calculation methods whenever possible.

The final result includes multiple ROO methods, including RVC, change in tariff classification (CTC or CTH), and process rules (mostly for chemicals). Textiles received a separate chapter and ROO list. While complicated to understand at first, especially for smaller companies, once firms meet the ROO for each product tariff line, no further modifications are needed to ship the items across all CPTPP members. Unlike the tariff schedules, which vary by member, the ROO schedule is identical for all.

<sup>14</sup> The concept of cumulation of rules of origin is not automatically straightforward though, as officials grappling with another FTA in Asia, the Regional Comprehensive Economic Partnership (RCEP) can attest. After more than 20 rounds of negotiations, RCEP negotiators continue to struggle with crafting cumulation rules that are satisfactory to all 16 parties.

<sup>15</sup> The TPP does not quite achieve the dream—while officials wanted every tariff to reach zero without exceptions, the final agreement does have a handful of lines across the 11 member markets that remain higher than zero. Most are in agriculture, like cream cheese into Japan (which never drops below 24.5%). Given that TPP was negotiated largely at the 10 digit domestic heading level, however, these are both quite narrow deviations and extremely tiny overall (given that members have upwards of 10,000 tariff lines at the 10 digit level).

<sup>16</sup> This information has a way of flowing onward to competitor firms in some jurisdictions.

<sup>17</sup> CTH or CTC allows products to meet the ROO as long as the final item represents a change in the way an item is categorized in the tariff schedule. As an example, the creation of juice from raw fruits may be sufficient to qualify for TPP origination, depending on the specific rule, since juice and fruit can be classified differently at different heading levels in the tariff schedule.

### 4.1.2 Trade Facilitation

Calculating new ROO rules and dropping tariffs to zero does not resolve supply chain issues for firms. In world of increasing “just in time” production methods, it does no good to have great rules of origin and zero tariffs if products are stuck at customs. The TPP crafted a series of rules to facilitate trade faster and easier across borders as well.

While the World Trade Organization’s (WTO) trade facilitation agreement was under negotiation through the early days of TPP talks, by the time the FTA was approaching closure, the global community had finally reached a deal in Bali. This meant that TPP could assume that the Bali Trade Facilitation Agreement (TFA) would be the “floor” and focus would be on additional steps beyond Bali commitments.

The TPP includes multiple rules designed to encourage faster trade over borders. For instance, the TPP does away with the need for certificates of origin—opting instead for self-certification of origin.<sup>18</sup> This means that firms need not trek anywhere to obtain a stamped piece of paperwork to show that products qualify for TPP preferential tariff rates, but can instead declare that the rules are followed. Self-certification does not mean that there are no rules, of course. Firms are required to keep internal documentation to prove origin for five calendar years after shipment.<sup>19</sup>

TPP officials did not want to spend time arguing over the specifics of forms at all. Hence the TPP provides a set of specified information fields that must be given to customs officials, but does not try to describe whether the document should be on goldenrod or canary yellow paper or what specific format a computer document must take.

The agreement also includes specific provisions to move trade faster, including time deadlines for express shipments, and perishable goods. TPP members agreed to have the same customs procedures at every point of entry.<sup>20</sup>

The deal also includes several provisions that could help firms such as advance rulings to give advice on tariff classifications (HS codes) and ROOs which are meant to remain stable for three calendar years. These rules are intended to minimize the time and frustration of companies in moving goods across the border.<sup>21</sup>

## 4.2 Regulatory Coherence

While firms often struggle with getting goods through customs, an increasing challenge is managing inconsistent standards and regulations. These obstacles can be both large and small, such as incompatible rules around product labeling, different testing regimes, unclear regulations for product safety and so forth.

Equally problematic, experience has shown that when countries reduce tariffs and improve trade facilitation at the border, a host of non-tariff barriers often pop up to hinder access to markets. Given the commitment of TPP to drop tariffs on all products without exceptions, absent a similar pledge to address the “behind the border” regulatory issues, it would be possible to imagine the agreement opening up market access for goods only to find firms frustrated by a new welter of non-tariff barriers.

One of the early “clusters” in TPP talks, therefore, was regulatory coherence. The idea was to think through many of the standards and other regulatory issues related to trade that might otherwise impede trade between members. The original intention of officials was to craft an ambitious chapter to address these issues. In the end, much of the “meat” or substance of the negotiations was pulled and put back into the specific chapters related to traditional regulatory issues such as standards and phytosanitary (SPS) or technical barriers to trade (TBT) chapters.

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<sup>18</sup> Note that Vietnam has opted to phase in this process over a five year period, although the implementing rules remained unclear as the agreement entered into force.

<sup>19</sup> Domestic level implementation will be important to watch. The TPP does have a clause to allow members to opt out of self-declaration.

<sup>20</sup> Of course, agreeing to do so is not quite the same thing as determining *how* to do so. Hence, like many parts of the deal, domestic level implementation will be an important component in achieving the final level of ambition.

<sup>21</sup> While the TPP is an extensive agreement, domestic level implementation will also be worth watching carefully. For example, while the TPP says that members will have advance ruling procedures, it does not say how this will be done—who will issue such rulings? In what format? Recognized by which authorities? Questions like these are likely to be common in the early months and years of the TPP as practical issues get ironed out.

Even in these chapters, the disparity in TPP membership meant that the agreement does not go as far as some early backers had hoped in crafting rules for the future. The gaps between existing SPS regulations in TPP member states proved rather substantial, as an example. It was hard to insist that every member have similar testing procedures for pesticides when some members had very limited facilities in the first place.

The final regulatory coherence chapter, therefore, appears less overwhelming than might have been expected, given the hype surrounding the idea throughout the negotiations. But it may be too easy to dismiss the impact of what officials did manage to achieve.

There are three elements of the TPP where regulatory coherence is more than might first meet the eye. First, the specific provisions were moved to individual chapters. Hence, new rules can be found throughout the agreement in chapters like SPS, TBT and e-commerce. Many of these provisions are actually about harmonizing regulations on issues like encryption, allowable labeling on wine and spirits, or procedures for accepting medical devices.

Second, the chapter includes a framework for TPP members to follow to craft regulations at the domestic level. For many countries—and particularly for potential new members in the future—this framework could dramatically improve the methods and procedures for approaching regulatory reform. Of critical importance, the chapter and the remainder of the TPP contain multiple pledges for transparency and sustained business/government/stakeholder engagement. For the crafting of regulations, the TPP suggests allowing sufficient transparency and comment periods with long-enough time periods to allow firms time to adjust to new rules and legislation before implementation. For some future TPP members, these ideas can be revolutionary.

Finally, the TPP has a complicated committee structure intended to help TPP regulators cohere in the future. While it is not entirely clear that the process will work, the idea is commendable—to try, at the least, to avoid regulatory fragmentation across TPP countries and, at best, encourage regulatory convergence.

Had the TPP been less economically diverse at the outset, it is probable that the regulatory coherence chapter might have been more robust. Members at similar levels of development are more likely to have analogous types of regulatory structures in place, making it easier to agree to harmonize rules between them. As an example, it was not possible to insist that all members include online consumer protection in the e-commerce chapter when not all member states had domestic level off-line consumer protection laws in place.

### 4.3 Services and Investment

While trade negotiators are quite comfortable working with existing structures that build upon GATT/WTO rules, the neat divisions imagined in the global trade regime do not match up well against today's modern firms. For instance, companies increasingly have a hard time separating goods from services. Even large, traditional manufacturing firms can derive substantial revenues from services, such as installation or after-sales services. New accounting methods suggest that the embedded value of services in manufacturing value chains can be quite high—as much as 40 percent or more.<sup>22</sup>

The TPP did not do away with the divisions between goods and services either. But it did use new approaches to services and investment that comes closer to fitting to business practices. In particular, the TPP was negotiated on the basis of a negative list for both services and investment. Rather than divide services into “modes” of delivery and scheduling only specific service sectors for market access and national treatment, the TPP automatically opens every single service and investment sector for both—unless the TPP member has taken out a reservation. The reservation reserves the “right” of the member to remain out of compliance with the general norm that every single service and investment sector and all 160 subsectors should be automatically opened now and into the future in the TPP.

This approach provides a number of significant benefits for companies. First, it ensures the widest degree of opening in services and investment sectors. Members committed to a small set of reservation annexes—everything else is opened for competition. Second, it helped to “future proof” the agreement. New services (yet unimagined) are automatically opened to TPP firms, unless members specifically gather and lodge a reservation

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<sup>22</sup> See, for example, Patrick Low and Gloria Pasadilla, *Services in Global Value Chains: Manufacturing Related Services*, World Scientific: 2016.

against it. Third, TPP companies can deliver services in whatever fashion they see fit. This helps match the agreement against technological changes in the future.

TPP members put reservations for both services and investment into the same set of annexes, further blurring the distinction between the two. The difference between Annex I and Annex II is that the latter commitments are not subject to what is often called the “ratchet” mechanism.<sup>23</sup> If TPP member countries alter domestic legislation, particularly as a result of FTAs signed elsewhere in the future, these benefits are to be granted to TPP firms if the reservation is included in Annex I, but not if the provision is listed in Annex II.

In practice, most of the items included in both Annex I and II are of limited commercial interest to firms. For example, Japan excluded motor vehicle disassembly and Vietnam prohibited investment in amusement parks of less than USD\$1 billion. Some are more important, such as Vietnam’s exclusion on the provision of educational services to Vietnamese citizens or Malaysia’s reservation for some Bumiputera contracts for Malay firms. However, given the potential range of services and investment areas that might have been covered, the final list of reservations is quite limited.

## 4.4 The Digital Economy

As befits an agreement aiming at high ambition, members also wanted to address the digital economy in a more comprehensive manner than previous FTAs. Doing so became tricky, however, since officials were operating in an environment of diverse existing regulations, fast moving technological and business developments, and parallel discussions in different settings on e-commerce and digital rules.

Like much of the rest of the TPP, the focus of many analysts to date on digital has been narrow: mainly centered on Chapter 14, E-Commerce, but digital economy provisions can be found throughout the agreement. Services and investment elements, as an example, are critically important to the digital world. Services are more likely to be delivered digitally over time. The method of scheduling used in the TPP—a negative list—allows new services to be automatically included in the TPP regardless of delivery methods, making it easier for such innovations as services in the internet of things (IoT) space to be traded across borders in TPP member markets. In the goods chapters, the digital economy will benefit from zero duties on all aspects of both ICT products (from every screw and piece of plastic through to semiconductors and screens) to nearly every product shipped via e-commerce channels, accepting product testing results from other TPP members,<sup>24</sup> and better trade facilitation to speed up delivery of packages over borders.

More obvious digital provisions included in the TPP include the explicit guarantees that members made not to discriminate against digital products, not to apply customs duties to digital products,<sup>25</sup> to protect source code, to prevent spam emails, and to ensure that government procurement contracts at the federal level allow firms to compete fairly without specific technology requirements.

The two elements of Chapter 14 that are especially important for the digital economy are the provisions that help ensure cross-border data flows continue unimpeded and that data centers cannot be required to be localized (or placed within one member border only).<sup>26</sup> The latter provision enables the continued use of cloud computing, which is important for a variety of reasons, including the ease of use by smaller firms.

Getting to agreement on free movement of data was not easy, as not all member states were at similar levels of technological development. As noted earlier, it was not possible to demand online consumer protection when not

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<sup>23</sup> The services “ratchet” (10.7.1.c) reads “an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 10.3 (NT), Article 10.4 (MFN), Article 10.5 (Market Access), or Article 10.6 (Local Presence).”

<sup>24</sup> As part of the TPP’s commitment to reduce duplicative testing more broadly in Chapter 8.6.

<sup>25</sup> Regardless of what may or may not happen with the WTO’s moratorium on digital duties in the future.

<sup>26</sup> Do note, however, that 14.11 (Cross-Border Transfer of Information by Electronic Means) and 14.13 (Location of Computing Facilities) come with the caveat that members may follow inconsistent measures to achieve legitimate public purposes. A further caveat is that the entire chapter carves out financial institutions by definition from coverage, although financial services have their own chapter (11) with the apparent ability to move information between members.



all 12 members had offline consumer protection. The TPP therefore urges members to move towards online consumer protection policies. Similarly, getting full agreement on cybersecurity proved impossible, leaving the TPP to urge members to cooperate and build capacity together in the future.<sup>27</sup>

In the end, although the TPP goes farther in building rules for the digital economy than most agreements, future amendments are likely to be needed to continue to adapt the rules to more effectively and efficiently suit the business environment of the future. The TPP was always designed to be a “living” agreement. This concept has never been spelled out concretely, but the idea has been to allow the deal to be revised over time and avoid the pitfalls seen in the Information Technology Agreement (ITA) at the WTO, which took nearly a decade of hard-fought negotiations to update. Given the changes coming in the digital world, it is likely that these provisions will face the greatest challenges in remaining relevant: despite the best efforts of officials to design future-proof rules to accommodate flexible business models for a modern economy.

## 4.5 Sustainable Development

The TPP is a comprehensive agreement. It includes substantially more chapters than is typical in most Asian or ASEAN FTAs. Two chapters were included in the agenda from the beginning at the behest of the United States: labor and the environment. Both were added for a variety of reasons, but the driving motivation was the importance of including such topics under Trade Promotion Authority (TPA) by the US Congress. There is insufficient room to discuss the TPA process in detail; absent such chapters, Congress signaled from the beginning that the TPP would be “dead on arrival.”

However, including the topics of labor<sup>28</sup> and environment was not straightforward. Significant negotiating energy was spent over two chapters that ultimately appear relatively thin compared to some others in the agreement. Long arguments in both chapters were spent over whether commitments should be legally binding in whole or in part.

The TPP brought together countries at diverse levels of economic development. Since the agreement committed all members to exactly the same provisions with limited exceptions,<sup>29</sup> equally high-quality pledges for environmental protections or worker rights could be problematic for some member countries.

The original plan in the TPP had been to commit all members to apply existing multilateral environmental agreements (MEAs). This would have put various MEAs into a legally binding setting. This quickly ran into objections from some member states that worried about the consequences of doing so. In the end, only three MEAs made it into the final text: the Montreal Protocol on the Ozone Layer, MARPOL on pollution from ships, and the UN Convention on Endangered Species (CITES).<sup>30</sup>

Several other environmental topics were added. Fisheries and fish subsidies were simultaneously being taken up by the WTO, so it was not clear exactly how much should be added to the TPP. In the end, TPP members agreed to regulate marine wild capture fishing. They also agreed to go beyond CITES in working on issues related to trade in endangered species, including illegal logging.

The environment chapter is unusual in the TPP, including the extent of public participation and the types and formation of various committees on different topics with specific timelines.

<sup>27</sup> In the revisions of the TPP to the CPTPP, Vietnam passed its own domestic cybersecurity law that contradicted the provisions of the trade deal. It then retained the right to violate the agreement for five years through a series of “side letters” signed with CPTPP member states.

<sup>28</sup> The TPP labor chapter is about worker rights, not about the movement of people, which is covered in Chapter 12, Temporary Entry for Business Persons.

<sup>29</sup> The TPP does contain the typical general exceptions clauses, found in the GATT/WTO for issues such as national security, health, public morals and so forth. See Chapter 29. Also, various clauses within the agreement have individual exceptions clauses. Not all elements of the final deal are legally binding, giving more policy space for some aspects of the overall agreement.

<sup>30</sup> There are a variety of reasons why only these three MEAs made it to the final agreement, including the fact that only about half the members were parties to other environmental agreements like The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) or The Inter-American Tropical Tuna Commission (IATTC) that might have otherwise been included. However, depending on the interpretation of the final TPP texts, some of the content can be read as committing members to defend MEA principles, even if the specific agreement is never referenced. As an example, while tuna are not individually called out in the agreement, the TPP does protect fishing more broadly.

The labor chapter would have been easiest to draft by following the eight conventions from the International Labor Organization (ILO). However, the United States was only a signatory to two of the conventions, despite being the key demandeur of the chapter in the first place. The default was to follow the 1998 ILO Declaration on Labor instead. The basic provisions include

- Adopt and maintain rights on:
  - Freedom of association and right to collective bargaining
  - Elimination of all forms of forced or compulsory labor
  - Effective abolition of child labor
  - Elimination of discrimination in employment

The TPP also requires that members maintain acceptable working conditions with minimum wages, hours of work, occupational safety and health.<sup>31</sup> The definitions of each will fall to each party to determine.

Note that both chapters are legally binding. The dispute system is slightly different for both environment and labor. First, the parties are meant to consult, then to work with committees, then Ministers, and only then refer the issue over for dispute settlement.

The agreement also contains a few other additional chapters that might broadly be considered to fit within a development framework, including one called “development.” Chapter 23 on development was added at the urging of Malaysia, in particular. It does not include many specific commitments, however, and does not pledge developed economy assistance in the form of either aid or capacity building for developing country members of the TPP. This goes back to the original orientation of the TPP that ruled out having a two-track agreement.

Instead, the development chapter contains a variety of shared understandings about the nature of development. It also includes a commitment to create a committee to help meet the objectives of both the development chapter and an additional chapter 21 on capacity building. Capacity building could include projects on agricultural, industrial and services sectors; promotion of education, culture and gender equality; and disaster risk management. Funding is not clearly built into the agreement.

Finally, although not often included under sustainable development, some TPP members have trumpeted the SME work as one important aspect to assist in economic growth. This chapter closed quite quickly, mostly because the agreement commits members to create and maintain a website to assist smaller size firms. In the absence of a Secretariat or dedicated body for the TPP, the websites are likely to become quickly out of date and full of broken links.

This may look particularly damaging for small business interests. As the original candle example indicates, however, having an SME chapter alone is not the right way to ensure the needs of smaller firms be addressed. Instead, the deep and interlocking benefits of the agreement are likely to do more to spur growth in smaller firms than any functioning website in the longer run. Small firms need such elements as zero tariffs, faster trade facilitation and digital trade for services to really be able to benefit from a trade agreement. Anything less comprehensive simply becomes too complicated for most time and resource constrained firms to tackle with benefits spread too thinly or not reaching smaller firms at all.

What SMEs will need, particularly in the short run, will be assistance in understanding the TPP and accessing information drafted in a common-sense manner that works for time-poor smaller firms. This information will need to be translated in local languages and communicated regularly in different settings, including both on- and off-line.

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<sup>31</sup> The original TPP also included several side letters on labor with some significant provisions, especially those between the United States and Vietnam, Brunei and Malaysia. With the withdrawal of the US from the agreement, these side letters have expired. The side letters contained much more stringent conditions, including independent unions in every business.

## 4.6 Institutional Arrangements

The CPTPP does not, as yet, have a dedicated body to handle the complicated arrangements embedded within the nearly 580 pages of rules and thousands of pages of individual member schedules. Instead, the agreement relies on a complex system of committees to manage the agreement. This is likely to yield less satisfactory results. It will, as noted above, make it harder to do things like maintain websites and other important information needed by small firms. The workload of implementation will be managed by overworked desk officers in various TPP member ministries.

In addition to implementation challenges, three areas may prove particularly problematic: dispute settlement, accession and handling big players. Each is considered in turn.

### 4.6.1 Dispute Settlement

The CPTPP has three different versions of dispute settlement. One is the investor-state dispute settlement (ISDS) system to manage disagreements between member state investors and member state governments.<sup>32</sup> Second is a system in place for labor and environmental disputes described above.<sup>33</sup> Finally, CPTPP has a government-to-government dispute settlement system.

As with all FTA agreements, none of the dispute systems are designed to be used. In other words, each member government presumably entered into the agreement with the intention of carrying out the provisions of the agreement in full and as legally obligated. If not, there is no dispute system in an FTA capable of managing a willfully errant member.

In the CPTPP, this point is especially true. Unlike other FTAs, the TPP does not repeat existing WTO commitments. It takes the WTO pledges as the baseline and builds upon them. Thus, nearly the whole of the 580 pages of commitments go beyond existing WTO law. It would not be possible to argue most CPTPP disputes in front of the WTO dispute system mechanism (DSU).

Should CPTPP members, in the future, begin to engage in protracted or prolonged disputes over the legal language in the agreement, especially in areas where texts are entirely new, without a Secretariat or other institutional mechanism, it could be quite tricky for member states to manage cases. As the WTO system clearly shows, over time, cases could build up and the amount of time, effort and knowledge needed to effectively run a dispute system can be considerable. The CPTPP members may need to return to the idea of creating a stronger institutional structure to manage disputes in the longer run.

### 4.6.2 Accession of New Members

A second point of difficulty for CPTPP, absent a Secretariat or other institution, is likely to be the accession of new members. While the TPP ultimately discarded the P4 template from the original four members, it did maintain the commitment to allow new members to accede in the future. The CPTPP itself represents membership changes from four to 12 to 11 members by the time of final signature.

The TPP gave preference to APEC members, since the agreement was meant to be one of the pathways towards the Free Trade Area of the Asia Pacific (FTAAP). The approach to creating larger agreement, with the 21 members of APEC, was endorsed by leaders of the 21 economies in 2010. The revised CPTPP removed the explicit linkage to APEC.

The first meeting of the CPTPP Commission took place in January 2019. In the absence of a Secretariat, the Commission is responsible for managing the agreement. The Commission is meant to meet at least annually.

The January discussions were largely about clarifying processes for accession, which had remained vague in both the original TPP and the revised CPTPP agreement. The informal rules under TPP required aspirants to meet bilaterally with each member to sort out potential irritants that might impede joining. Then the collective membership could decide if the new aspirant could continue forward. Negotiating members were not allowed a

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<sup>32</sup> Note that ISDS does not apply to all. New Zealand carved out its own investors from coverage with some member governments through side letters in the CPTPP.

<sup>33</sup> Which ultimately ends up at a government-to-government dispute, but only after a longer series of steps has been carried out to try to resolve the dispute.

say on completed elements of the rulebook, but bargained over specific market access schedules and any new or unfinished portions of the rules and legal text.

The CPTPP gives priority to the first six “original” members<sup>34</sup> in determining which new member is accepted into the process. The informal rules that governed the TPP were largely maintained, with new members negotiating over country-specific schedules and commitments and not over existing rules or procedures. Each new member is to be “partnered” with an existing CPTPP country to help facilitate the scheduling and negotiating process. New provisions were incorporated into the CPTPP rulebook after the January 2019 session.<sup>35</sup>

#### 4.6.3 Dealing with Big Players

The Commission system will also be challenging to manage if and when bigger countries opt to join. For example, while the agreement currently envisages the return of the United States with relatively minor fuss, this is unlikely to be the case. One key difference between the TPP and CPTPP is the suspension of 20 provisions as well as any element specific to the United States, including all US market access commitments.<sup>36</sup> The suspended provisions, including rules like the extension of copyright terms from “life of the author plus 50 years” to “life of the author plus 75 years,” were not revoked. Instead, they were suspended until the time when the United States returns to the agreement. At that point, CPTPP members can decide whether or not to reinstate any, all or none of the provisions.

While CPTPP members may wish to limit changes to the existing agreement to these 20 provisions<sup>37</sup> it is highly unlikely that a future US administration (and particularly a future US Congress) will allow the agreement to move towards domestic level ratification without any other amendments. The longer the gap in time between the original negotiation of the TPP and the reentry of the United States, the harder it will be to justify the informal ban on any adjustments to the rules in the agreement beyond the 20 suspended provisions.

Managing American reentry will be difficult for the existing CPTPP members. It may also be challenging for CPTPP countries to handle a potential Chinese request to join. The market size of both the United States and China dwarf existing members.

China has always been eligible to join the TPP as an APEC economy. Clearly the TPP (and now CPTPP) would benefit from including more members and, particularly, more large members. Chinese leadership took advantage of joining the WTO to undertake challenging structural reforms that unleashed more domestic level economic growth. It is probable that CPTPP membership would do the same.

Having a permanent body to handle the CPTPP would not, of course, solve all the challenges attached to getting large, powerful new members into the institution. But handling accession through an informal process managed by a Commission that meets annually compounds the difficulties.

## 5 CPTPP Effects on Non-Members

Not every country will join the CPTPP. For many, the agreement is simply too ambitious. The commitments are too deep and too broad. The pledges cut too far into domestic policy space to be palatable. But this does not mean the agreement will not be felt, particularly in CPTPP neighboring countries.

The CPTPP will likely influence non-members in five ways. First, some current non-members will join the deal. Second, some elements of the agreement will spill-over as certain aspects cannot be limited to only trade with members. Third, non-member firms can use the agreement if they study the rules carefully. Fourth, to avoid trade and investment diversion, non-members may need to align some domestic rules closer to CPTPP. Finally, some portions of the rules may appear in different trade settings in the future as member governments transfer similar rules into other bilateral, regional or global trade settings. Each is considered in turn.

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<sup>34</sup> Australia, Canada, Japan, Mexico, New Zealand and Singapore.

<sup>35</sup> See “Commission Decisions,” particularly on accession at <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text>

<sup>36</sup> For more details on the 20 provisions, see *TPP11: Unpacking the Suspended Provisions*, Asian Trade Centre Policy Brief 17:11a, March 2018, available at: <https://static1.squarespace.com/static/5393d501e4b0643446abd228/t/5aa0eb3c9140b75cb2070691/1520495424652/Policy+Brief+17-11a+TPP11+Suspensions+%28with+amendments%29.pdf>

<sup>37</sup> The CPTPP also included two additional clarifications that did not involve the United States.

The TPP had originally offered membership to the 21 economies in APEC. This link has now been broken in the CPTPP, allowing other countries to consider joining. Given the competitive benefits for member firms of being involved, governments are likely to think carefully about joining the CPTPP in the future.

New members may not just be obvious candidates like South Korea, which already has trade links to most CPTPP members. Colombia has formally applied to join. Given Colombia's participation in the Pacific Alliance, it would make sense to have all four members in the CPTPP as well.<sup>38</sup>

Even the United Kingdom has expressed an interest in joining. While this may be a long-shot idea that may never materialize, it shows that governments that are smart may recognize the benefits of joining an ambitious trade agreement with 11 or more countries all at once, rather than engaging in a series of bilateral negotiations or working with less ambitious regional players.<sup>39</sup>

Second, non-members can still gain some benefits from the agreement as certain aspects automatically spill over. Once a member country facilitates trade better at customs or expands intellectual property rights protections into new areas, it does not do so just for TPP member firms. These changes will flow through to non-member firms as well. As an example, faster movement of cargo through customs after improved risk management systems are installed will affect all cargo. It is not the case that only packages from TPP members get better or faster treatment. Protection of scent marks in IP laws does not apply only to firms from CPTPP member countries.

Third, some TPP provisions can apply to non-member firms. Tariff cuts come about when firms substantially transform goods within TPP countries for shipments between TPP countries. A company that follows the rules of origin and other associated rules in the agreement may be able to use the deal even if the headquarters is located outside the TPP. Since many of the benefits of the agreement are substantial, savvy firms may find it worthwhile to restructure supply chains to take advantage of the TPP.

Of course, it will not be possible to—for example—grow wheat in a non-member country and ship it without change into a TPP country, since the rules of origin would not allow such wholly obtained goods to move so freely. As such, agricultural goods and many products made by smaller firms will find it hardest to use the TPP unless they are physically located inside TPP member countries.

Fourth, countries that are not members of TPP and have no intention of joining the agreement at all, may find that they have limited choice but to come into closer alignment with some CPTPP rules. Given the extent of benefits in the agreement, firms are likely to relocate, if they have options, into TPP countries. This could result in both trade and investment diversion out of non-members. To combat this challenge, some non-members may find it prudent to mimic TPP provisions in key areas domestically and reduce the incentive of firms to shift.

Finally, some aspects of the TPP may find their way into other trade negotiations. For instance, the use of product specific rules of origin (PSRs) has been picked up in the parallel Regional Comprehensive Economic Partnership (RCEP) talks. Seven countries are in both negotiations: Australia, Brunei, Japan, Malaysia, New Zealand, Singapore and Vietnam. Some of the cross-border data flow and data localization discussions have appeared in other settings, including RCEP and the WTO.

## 5.1 Impact of the CPTPP on the WTO and the Global Trading System

Negotiations in the TPP and CPTPP have ebbed and flowed, at times, with ongoing talks in the WTO. All CPTPP members are strongly committed multilateralists. The earliest discussions about crafting a high-quality trade deal in APEC started in the late 1990s. At the time, officials wanted to show that such ambitious outcomes were possible, and the aborted Seattle Round WTO discussions gave added urgency to the task.

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<sup>38</sup> The Pacific Alliance is another deep integration effort, making it challenging to operate if Colombia remains in the deal with Chile, Mexico and Peru, but out of the CPTPP with the same members. The PA may also expand further as Costa Rica has been discussing membership. Four CPTPP countries are also in accession talks with the PA: Australia, Canada, New Zealand and Singapore.

<sup>39</sup> For more information on the UK's prospects for joining the CPTPP, see *A Roadmap for UK Accession into the CPTPP*, Initiative for Free Trade, Deborah Elms and Hosuk Lee-Makiyama, October 2018, available at: <http://ifreetrade.org/pdfs/UK-CPTPP.pdf>

By the time of the WTO meetings in Doha in November 2001, however, it looked like the global trading regime might be back on track. The enthusiasm for moving ahead in the APEC context was not as high, leaving only three countries to press on with the concept. When the P4 finally came into existence, it was little noticed.

But as the WTO's Doha agenda stalled in the summer of 2008, the P4 started to look like a promising vehicle for pushing trade liberalization once more. By 2009, the TPP was ready for action and talks got underway in March 2010. When the US withdrew from the finished agreement in January 2017, it might have been the end of the line for the TPP.

Had the global trade regime been healthy, it is likely that the TPP would have stayed moribund. In the absence of forward movement in Geneva and with the United States increasingly rocking the global trading system by promoting a series of unusual trade actions, TPP members rather quickly started examining options to keep the TPP alive and moving ahead.

Since, as noted earlier, most of the TPP's rulebook goes well beyond the existing WTO commitments, allowing it to lapse would not promote the spread of more advanced trade regulations in critically important areas for business. It would not have encouraged countries from diverse levels of economic development to pursue market liberalization and ambitious outcomes.

While most members do not appear to have been thinking directly about transferring specific TPP rules back into the WTO at some point in the future, it is clearly easier to do so if there is a functioning TPP than to resuscitate concepts from a defunct deal. Indeed, this process of encouraging the spread of ideas from TPP onward can be seen in the coalition within the WTO of members in the e-commerce space as countries like Australia, Japan and Singapore have taken leadership roles in Geneva.



## 6 Conclusion

The CPTPP rules are likely to spread beyond the original members because this trade agreement does a better job of matching the complicated world of integrated trade and supply chains of today. While the number of free trade agreements has exploded, particularly in Asia, few are well suited for use by businesses. They tend to be too small, often covering only tariff cuts in goods, often in product lines that are rarely traded, with limited openings in services and investment. Other aspects of trade that are becoming increasingly important for business, such as standards and intellectual property, are ignored completely. As a result, companies typically pay no attention to trade agreements as they go about their business and plan expansion into new markets.

The CPTPP is likely to change this calculus. This trade agreement will either deliver new market access or lower costs to companies both large and small. It does so because the interlocking nature of the deal better matches the needs of firms.

The deep, ambitious agreement contains elements that are likely to be replicated elsewhere—either deliberately as countries try to provide similar benefits to their own companies or by default as neighboring countries try to avoid suffering potential trade and investment diversion.

The CPTPP is groundbreaking in many respects. It is a testament to what countries can accomplish when they voluntarily collaborate in an agreement designed to better fit the modern economy. The proof of the argument lies in the fact that the TPP has already attracted new members—growing from the original four participants to 11 with more waiting in the wings to join in a second tranche.

It is not just advanced economies that see the benefits of using the TPP to undertake domestic reforms needed to match the provisions contained in the FTA. Even developing economies have figured out that trade and investment flows are likely to shift to TPP members that sign up to high quality, deep and broad provisions that give firms greater certainty over rules.

**Address | Contact**

Bertelsmann Stiftung  
Carl-Bertelsmann-Straße 256  
33311 Gütersloh  
Telefon +49 5241 81-0

GED Team  
Program Megatrends  
Telephone +49 5241 81-81353  
ged@bertelsmann-stiftung.de

[www.bertelsmann-stiftung.de](http://www.bertelsmann-stiftung.de)